

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FRANK FOSTER, et al.,	:	
	:	
Plaintiff,	:	Case No. 2:08-cv-00020
	:	
v.	:	Judge Sargus
	:	
NATIONWIDE MUTUAL INSURANCE COMPANY,	:	Magistrate Judge Deavers
	:	
Defendant.	:	

ORDER ON TRIAL PROCEDURE

Following the pre-trial conference held on August 2, 2011, it is hereby ordered that the following procedure agreed to by the parties shall govern the conduct and order of presentation of proof at trial.

First, the Court's previous bifurcation order of February 23, 2011 is hereby superseded by this Order, and the trial is hereby ordered bifurcated to the extent set forth below. The parties agreed that liability and all special damages issues (including liquidated damages, fluctuating workweek, and willfulness) will be tried in the first phase of the trial, and these determinations shall bind Defendant and all Plaintiffs. The jury will also make an individualized determination of the number of hours worked only for each of the Plaintiffs who testify in the first phase. If the jury finds in favor of the Plaintiffs on liability, then the parties have agreed to utilize a Special Master to make individualized determinations of hours worked and calculation of damages for each of the remaining opt-in Plaintiffs who did not testify in the first phase of the trial. The identity of the Special Master and the procedure to be utilized by the Special Master shall be determined in separate orders.

Second, Plaintiffs shall present their case-in-chief first to the jury. After the Plaintiffs rest, Defendants shall present their case-in-chief to the jury. Plaintiffs and Defendant shall each have the opportunity to present rebuttal on any issue on which they have the burden of proof.

IT IS SO ORDERED.

8-4-2011
Dated


Edmund A. Sargus, Jr.
United States District Judge